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6 Attorneys for Defendant KELLY VAN
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
10

11 ELVH, INC., a California corporation,
12 Plaintiff,

13 vs.

14 KELLY VAN HALEN, an individual,
15 Defendant.
16

CASE NO. 13-CV7524 MWF-PJW
The Hon. Michael W. Fitzgerald

**DEFENDANT KELLY VAN
HALEN'S ANSWER TO
COMPLAINT**

DEMAND FOR JURY TRIAL

Trial Date: None Set

1 Defendant Kelly Van Halen ("Defendant") hereby answers the Complaint (of
2 Plaintiff ELVH, Inc. ("Plaintiff")).

3 **NATURE OF THE ACTION**

4 The allegations in this portion of the Complaint do not call for any admissions
5 or denials.

6 **JURISDICTION AND VENUE**

7 1. Defendant denies any and all liability in this case, but admits that
8 Plaintiff's Complaint does appear to make allegations arising under the Lanham Act,
9 15 U.S.C. §1502 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §2201(a), and
10 several California state law claims.

11 2. Defendant denies any and all liability in this case, but admits that venue
12 is proper as alleged by Plaintiff in paragraph 2 of the Complaint.

13 **THE PARTIES**

14 3. Defendant is without knowledge or information sufficient to form a
15 belief as to the truth of the allegations set forth under Paragraph 3 of the Complaint
16 and thus, denies same.

17 4. Defendant admits that she resides in the County of Los Angeles,
18 California.

19 **FACTS**

20 5. Defendant is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations set forth under Paragraph 5 of the Complaint
22 and thus, denies same.

23 6. Defendant is without knowledge or information sufficient to form a
24 belief as to the truth of the allegations set forth under Paragraph 6 of the Complaint
25 and thus, denies same.

26 7. Defendant is without knowledge or information sufficient to form a
27 belief as to the truth of the allegations set forth under Paragraph 7 of the Complaint
28 and thus, denies same.

1 8. Defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations set forth under Paragraph 8 of the Complaint
3 and thus, denies same.

4 9. Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations set forth under Paragraph 9 of the Complaint
6 and thus, denies same.

7 10. Defendant admits the truth of the allegations set forth under Paragraph
8 10 of the Complaint.

9 11. Defendant is without knowledge or information sufficient to form a
10 belief as to the truth of the allegations set forth under Paragraph 11, and
11 subparagraphs 11a., 11b., 11c., 11d. and 11e., of the Complaint and thus, denies
12 same.

13 12. Defendant is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations set forth under Paragraph 12 of the Complaint
15 and thus, denies same.

16 13. Defendant admits the facts set forth under Paragraph 13, and
17 subparagraphs 13a., 13b. 13c., 13d. and 13e. of the Complaint.

18 14. Defendant admits the allegations set forth under Paragraph 14 of the
19 Complaint.

20 15. Defendant admits the allegations set forth under Paragraph 15 of the
21 Complaint.

22 16. Defendant denies the allegations set forth under Paragraph 16 of the
23 Complaint.

24 17. Defendant admits that she markets and sells apparel, blankets and other
25 fashion accessories. Defendant denies the remaining allegations set forth under
26 Paragraph 17 of the Complaint.

27 18. Defendant denies the allegations set forth under Paragraph 18 of the
28 Complaint.

FIRST CAUSE OF ACTION

(Infringement of a Registered Trademark)

Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1)

19. In response to paragraph 19 of the Complaint, Defendant repeats, realleges, and reincorporates herein by reference as though fully set forth her response to the allegations in paragraphs 1 through 18 of the Complaint.

20. Defendant denies the allegations set forth under Paragraph 20 of the Complaint.

21. Defendant denies the allegations set forth under Paragraph 21 of the Complaint.

22. Defendant denies the allegations set forth under Paragraph 22 of the Complaint.

23. Defendant denies the allegations set forth under Paragraph 23 of the Complaint.

SECOND CAUSE OF ACTION

(Trademark Dilution)

Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c)

24. In response to paragraph 24 of the Complaint, Defendant repeats, realleges, and reincorporates herein by reference as though fully set forth her response to the allegations in paragraphs 1 through 23 of the Complaint.

25. Defendant denies the allegations set forth under Paragraph 25 of the Complaint.

26. Defendant denies the allegations set forth under Paragraph 26 of the Complaint.

THIRD CAUSE OF ACTION

(False Designation)

Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A)

27. In response to paragraph 27 of the Complaint, Defendant repeats,

1 realleges, and reincorporates herein by reference as though fully set forth her
2 response to the allegations in paragraphs 1 through 26 of the Complaint.

3 28. Defendant denies the allegations set forth under Paragraph 28 of the
4 Complaint.

5 **FOURTH CAUSE OF ACTION**

6 (Common Law Trademark Infringement)

7 29. In response to paragraph 29 of the Complaint, Defendant repeats,
8 realleges, and reincorporates herein by reference as though fully set forth her
9 response to the allegations in paragraphs 1 through 28 of the Complaint.

10 30. Defendant is without knowledge or information sufficient to form a
11 belief as to the truth of the allegations set forth under Paragraph 30 of the Complaint
12 and thus, denies same.

13 31. Defendant is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations set forth under Paragraph 31 of the Complaint
15 and thus, denies same except that Defendant denies that she has made any claim to
16 Plaintiff's trademarks. Defendant has adopted trademarks that are different that
17 Plaintiff's alleged trademarks.

18 32. Defendant denies the allegations set forth under Paragraph 32 of the
19 Complaint.

20 33. Defendant denies the allegations set forth under Paragraph 33 of the
21 Complaint.

22 34. Defendant denies the allegations set forth under Paragraph 34 of the
23 Complaint.

24 **FIFTH CAUSE OF ACTION**

25 (Unfair Competition)

26 Cal. Bus. & Prof. Code §17200 *et seq.*

27 35. In response to paragraph 35 of the Complaint, Defendant repeats,
28 realleges, and reincorporates herein by reference as though fully set forth her

1 response to the allegations in paragraphs 1 through 34 of the Complaint.

2 36. Defendant denies the allegations set forth under Paragraph 36 of the
3 Complaint.

4 37. Defendant denies the allegations set forth under Paragraph 37 of the
5 Complaint.

6 38. Defendant denies the allegations set forth under Paragraph 38 of the
7 Complaint.

8 **SIXTH CAUSE OF ACTION**

9 (Common Law Unfair Competition)

10 39. In response to paragraph 39 of the Complaint, Defendant repeats,
11 realleges, and reincorporates herein by reference as though fully set forth her
12 response to the allegations in paragraphs 1 through 38 of the Complaint.

13 40. Defendant denies the allegations set forth under Paragraph 40 of the
14 Complaint.

15 41. Defendant denies the allegations set forth under Paragraph 41 of the
16 Complaint.

17 42. Defendant denies the allegations set forth under Paragraph 41 of the
18 Complaint.

19 **SEVENTH CAUSE OF ACTION**

20 (California Trademark Dilution)

21 Cal. Bus. & Prof. Code § 14247

22 43. In response to paragraph 43 of the Complaint, Defendant repeats,
23 realleges, and reincorporates herein by reference as though fully set forth her
24 response to the allegations in paragraphs 1 through 42 of the Complaint.

25 44. Defendant denies the allegations set forth under Paragraph 44 of the
26 Complaint.

27 45. Defendant denies the allegations set forth under Paragraph 45 of the
28 Complaint.

1 46. Defendant denies the allegations set forth under Paragraph 46 of the
2 Complaint.

3 47. Defendant denies the allegations set forth under Paragraph 47 of the
4 Complaint.

5 **EIGHTH CAUSE OF ACTION**

6 (Declaratory Action)

7 28 U.S.C. § 2201

8 48. In response to paragraph 48 of the Complaint, Defendant repeats,
9 realleges, and reincorporates herein by reference as though fully set forth her
10 response to the allegations in paragraphs 1 through 47 of the Complaint.

11 49. Defendant denies the allegations set forth under Paragraph 49 of the
12 Complaint.

13 50. Defendant denies the allegations set forth under Paragraph 50 of the
14 Complaint.

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to State a Claim)**

18 1. The FAC and each and every claim for relief therein, fail to allege facts
19 sufficient to state a claim for relief against Defendants.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Laches)**

22 2. Plaintiff's claims are barred by the doctrine of laches.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Release, Waiver, and Estoppel)**

25 3. Plaintiff's claims are barred by the doctrines of release, waiver, and
26 estoppel.

27 **FOURTH AFFIRMATIVE DEFENSE**

28 **(Privilege)**

1 4. Plaintiffs' claims are barred, in whole or in part, because Defendants'
2 activities were privileged or otherwise justified, as such activities were proper, fair,
3 legitimate business activities and/or due to business-related reasons which were
4 neither arbitrary, capricious nor unlawful.

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7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Lack of Irreparable Harm)**

9 5. Plaintiff's claims for injunctive relief are barred because Plaintiff
10 cannot show that it will suffer any irreparable harm from Defendant's actions.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(First Amendment)**

13 6. The claims made in the Complaint are barred, in whole or in part, by
14 the First Amendment to the Constitution of the United States.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Right to Assert Additional Defenses)**

17 7. Defendant reserves the right to allege additional affirmative defenses as
18 they may become known, or as they evolve during the litigation, and to amend this
19 Answer accordingly.

20 **PRAYER**

21 WHEREFORE, Defendant prays for judgment as follows:

- 22 1. That Plaintiff takes nothing by way of its Complaint;
23 2. That the Complaint, and each and every purported claim for relief
24 therein, be dismissed with prejudice;
25 3. That Defendant be awarded her costs of suit incurred herein, including
26 attorneys' fees and expenses; and
27 4. For such other and further relief as the Court deems just and proper.
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1 DATED: December 30, 2013

DANIEL C. DECARLO
ROBERT M. COLLINS
LEWIS BRISBOIS BISGAARD & SMITH LLP

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5 By: 

Daniel C. DeCarlo

Attorneys for Defendant KELLY VAN
HALEN

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9 **DEMAND FOR JURY TRIAL**

10 Defendant hereby demands a jury trial on all issues which can be heard by a
11 jury.

12 DATED: December 30, 2013

DANIEL C. DECARLO
ROBERT M. COLLINS
LEWIS BRISBOIS BISGAARD & SMITH LLP

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